

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Stan Norman
North Canton, Ohio

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File No. EB-99-DT-044

NAL/Acct. No. X3236-001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 12, 2000

By the Enforcement Bureau, Detroit Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Stan Norman has apparently violated Section 303(q) of the Communications Act of 1934 ("Act"), as amended,¹ and Sections 17.4(a), 17.48(a) and 17.50 of the Commission's Rules² (the "Rules") for failure to register his radio tower ("tower") with the Commission, failure to notify the FAA that the lights on the tower were not functioning properly, and failure to repaint the tower in order to maintain good aeronautical visibility. We conclude that Mr. Norman is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. Stan Norman is the owner of a tower in East Sparta, Ohio (located at north latitude 40° 40' 17", west longitude 081° 23' 59"). The tower exceeds 200 feet in height, and must therefore be painted and illuminated in accordance with Section 17.21 of the Rules.³ On November 30, 1999, the Commission's Detroit Office of the Enforcement Bureau received information from the FCC's Technical and Public Safety Division ("TPSD") alleging that this tower was not registered with the Commission, was "in dire need of painting, and had only one top light working", which was not flashing as required by the Rules. This information was reported to TPSD anonymously. The information that was received from TPSD also contained information from the Federal Aviation Administration ("FAA") and Federal Communications Commission ("FCC") records that indicated Mr. Norman was the owner of the tower and that he had filed information with the FAA to correct the tower height and coordinates with the FAA. The FAA had assigned a case number to this tower, 99-AGL-5779-OE. Acting

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.4(a), 17.48(a), and 17.50.

³ 47 C.F.R. § 17.21.

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on this information, especially because of the possibility of danger to air traffic navigation, the District Director of the Detroit Office dispatched an FCC agent on December 2, 1999 to investigate the complaint.

3. On December 2, 1999, at 4:00 p.m., an FCC agent from the Detroit Office conducted an inspection of this tower. During the inspection, the FCC agent saw that the tower's red sidelights, red center-flashing beacon, and top-flashing beacon were properly located on the tower and that the tower was painted with the correct number of colored bands. However, the FCC agent observed that the tower's paint was peeling and quite faded. Further, the FCC agent observed that no FCC tower registration numbers were posted at the tower site. The FCC agent left and later returned to observe the tower's lighting at 5:45 p.m. and 6:05 p.m. that evening. The FCC agent saw that the tower's red sidelights and red center-flashing beacon were dark and that the top-flashing beacon was burning steady red.

4. On December 2, 1999 at 7:35 p.m., the FCC agent telephoned Stan Norman, whose name appeared on the FAA database as the owner of the tower. During the telephone conversation between Mr. Norman and the FCC agent, Mr. Norman stated that he was the tower owner, and had not notified the FAA that the tower lights were faulty. He stated further that until approximately three months ago the tower had been leased to Motorola's tower division and because of this lease he thought Motorola had notified the FAA about the faulty tower lights. Mr. Norman went on to say, that in July of 1999, he had received a letter from the FCC in Gettysburg (the Commission's Wireless Telecommunications Bureau) stating that his tower needed to be registered with the FCC. Accompanying the letter was an antenna structure registration application. Stan Norman stated he had completed the application and sent it to Motorola for review believing that it would forward the application to the FCC.

5. On December 7, 1999, in a telephone call between the FCC agent and Mr. Norman, Mr. Norman told the FCC agent that he had notified the FAA on December 3, 1999 of the faulty tower lights.

6. On December 15, 1999, the District Director issued an Official Notice of Violation ("NOV") to Stan Norman, 7553 Elmhurst Avenue Northwest, Canton, Ohio 44720-5929, for failure to register the tower with the Commission, failure to notify the FAA that the lights on the tower were not functioning properly, and failure to repaint the tower to maintain good visibility. In his reply to the NOV, dated January 19, 2000, Mr. Norman stated that the tower lighting problems were corrected and that the tower was scheduled for repainting as soon as the weather permitted. Mr. Norman also indicated that Motorola was responsible for the tower and had leased the tower from him for the past 15 years, and according to the lease, Motorola was responsible for the lighting and tower maintenance. Mr. Norman also stated that Motorola had recently sold their tower division to Pinnacle Towers, which was in the process of buying the tower from him. Attached to his response was a copy of the FCC Antenna Structure Registration Form, dated December 12, 1999, with an assigned FCC registration number of 1207574. He also indicated that he had a new mailing address of 1894 Butternut St. NW, North Canton, Ohio 44720.

III. DISCUSSION

7. Section 303(q) of the Act requires tower owners to maintain the painting and/or illumination of the tower as prescribed by the Commission. Section 17.4(a) of the Rules requires that tower structures be registered with the Commission. Antenna towers that exceed 200 feet in height above the ground must be painted and illuminated in accordance with the Rules. Section 17.48(a) of the Rules holds the owners of such towers responsible for ensuring that the FAA is notified if the lights on the tower are not functioning properly.

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Section 17.50 of the Rules states that towers requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility.

8. Based on the evidence before us, we find that Stan Norman willfully⁴ violated Section 303(q) of the Act, and Sections 17.4(a), 17.48(a) and 17.50 of the Rules by failing to register his tower with the Commission, failing to notify the FAA of improperly functioning tower lights, and failing to repaint the tower as often as necessary in order to maintain good visibility to air navigation. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999), ("Policy Statement"), sets the base forfeiture amount for prescribed lighting and painting at ten thousand dollars (\$10,000), and for failure to file required forms at three thousand dollars (\$3,000).⁵ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a seven thousand dollar (\$7,000) monetary forfeiture is warranted because the record reveals that Mr. Norman has an overall history of compliance and he showed good faith surrounding the violations by his voluntary disclosure of information.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80 of the Rules,⁷ Stan Norman is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating Section 303(q) of the Act, and Sections 17.4(a), 17.48(a), and 17.50 of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the date of release of this NOTICE OF APPARENT LIABILITY, Stan Norman SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3236-001.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387(1991).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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12. The response if any must be mailed to Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division, 445 12th Street S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. X3236-001.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Stan Norman at 1894 Butternut St. NW, North Canton, Ohio 44720.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director, Detroit Office
Enforcement Bureau

⁸See 47 C.F.R. § 1.1914.